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No. 94-116

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

SCHOOL CITY OF MISHAWAKA,
Petitioner,

v.

FAMILY AND CHILDREN'S CENTER, INC.
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF FOR THE STATE OF INDIANA AS AMICUS CURIAE SUPPORTING CERTIORARI

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14 pp

QUESTION PRESENTED

Whether a party who lacks standing to bring a claim under the Individuals with Disabilities Education Act, 20 U.S.C. § 1415, may acquire standing to bring such a claim by invoking regulations promulgated pursuant to another more general federal statute.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
INTEREST OF THE AMICUS CURIAE.	1
STATEMENT	2
REASONS FOR GRANTING THE WRIT	4
A. The Seventh Circuit's Decision Conflicts with Those of Other Circuits on an Issue of Considerable Importance	4
B. The Seventh Circuit Failed to Afford Due Deference to the Agency's Interpretation of Its Own Regulations	5
C. The Seventh Circuit's Decision Prevents the State's Compliance with the Requirements of the IDEA	8
CONCLUSION	9

TABLE OF AUTHORITIES

Cases:	Page
Association for Community Living v. Romer, 992 F.2d 1040 (10th Cir. 1993)	5
Chevron, U.S.A. v Natural Resources Defense, 467 U.S. 837 (1984)	5
Christopher W. v. Portsmouth School Comm., 877 F.2d 1089 (1st Cir. 1989)	5
Estate of Cowart v. Nicklos Drilling Co., 112 S. Ct. 2589 (1992)	7
Family and Children's Center, Inc. v. School City of Mishawaka, 13 F.2d 1052 (7th Cir. 1994)	2
Hoeft v. Tuscon Unified School District, 967 F.2d 1298 (9th Cir. 1992)	5
Metropolitan School District of Wayne Twp. v. Davila, 969 F.2d 485 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 1360 (1992	6
Morales v. Trans World Airlines, 112 S. Ct. 2031 (1992)	7
Mrs. W. v. Tirozzi, 832 F.2d 748 832 F.2d (2nd Cir. 1987)	5
Stinson v. U.S., 113 S. Ct. 1913 (1993)	6

TABLE OF AUTHORITIES - Continued

	Page
Statutes and Rules:	
20 U.S.C. § 1221e(3)(a)(1)	2, 7
20 U.S.C. § 1400	1
20 U.S.C. § 1412	8
20 U.S.C. § 1413	8
20 U.S.C. § 1415	4
20 U.S.C. § 1415(a)	7
20 U.S.C. § 1415(b)	3
20 U.S.C. § 2831(a)	2
34 C.F.R. § 76.780	2
34 C.F.R. § 300.13	3
34 C.F.R. § 300.14	3
34 C.F.R. § 300.500	3
34 C.F.R. § 300.506(a)	3
34 C.F.R. § 300.600	2
34 C.F.R. § 300.660	2
511 Ind. Admin.Code 7-7	1
511 Ind. Admin. Code 7-15-4	3
511 Ind. Admin. Code 7-15-5	3
Miscellaneous:	
44 Fed. Reg. 26,298 (1979)	3
Johnson, 18 IDELR 589 (OSERS, 1991)	6
Trible, EHLR 211:396 (OSERS, 1986)	8

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INTEREST OF THE AMICUS CURIAE

The State of Indiana provides special education and related services to more than 110,000 school-aged children whose disabilities interfere with their educational performance. In order to receive federal funds under the Individuals with Disabilities Education Act ("IDEA"), 20 U.S.C. § 1400 *et seq.*, Indiana, as all states, must provide children with disabilities and their parents a meaningful process to ensure that each child receives a free, appropriate public education. *See* 511 Ind.Admin.Code 7-7 *et seq.*

The State is also mandated by federal regulations to provide an administrative procedure to address complaints that federally funded educational programs are failing to comply with federal law, including the IDEA. Indiana, as well as other states, has developed such complaint procedures to comply with the Education Division General Administrative Regulations ("EDGAR"), 34 C.F.R. § 76.780 *et seq.* and 34 C.F.R. § 300.660 *et seq.* [1] Pet. App. 117a.

The State of Indiana has a strong interest in providing parents and disabled children with the process required by the IDEA while preventing third-party interference with their rights. The holding of the Seventh Circuit Court of Appeals in *Family & Children's Center v. School City of Mishawaka*, 13 F.3d 1052 (7th Cir. 1994), severely restricts the State's ability to protect those rights. More broadly, because other circuit courts have recognized that the two types of federally mandated procedures have different scopes and purposes, Indiana has an interest in having this Court resolve the present conflict . Indiana, therefore, submits this brief pursuant to Rule 37.5 of the Rules of this Court to assist the Court in the resolution of this case.

STATEMENT

This case concerns the relationship between the EDGAR complaint procedures and the IDEA procedural safeguards and whether a third party may use the State's EDGAR procedures to take advantage of IDEA procedures specifically reserved for parents.

1. The EDGAR procedures, promulgated pursuant to 20 U.S.C. § 1221e(3)(a)(1), apply to a variety of federally funded educational programs, only one of which is the

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[1] EDGAR complaint procedures also appear in the IDEA regulations at 34 C.F.R. § 300.600 et seq. and were issued under the authority of the U.S. Secretary of Education to ensure compliance with assurances made by agencies. 20 U.S.C. § 2831(a).

IDEA.[2] These procedures are broad in scope and are available to "any individual, group of individuals, agency or organization." 511 Ind.Admin.Code 7-15-4. In contrast, the procedural safeguards promulgated pursuant to the IDEA are narrower in scope and purpose and are limited to parents of a child with a disability to address issues specifically related to the identification, evaluation or placement of the child or matters relating to providing the child with a free appropriate public education.[3] 20 U.S.C. § 1415(b); 34 C.F.R. § 300.500 *et seq.*; 511 Ind.Admin.Code 7-15-5.

2. The Family and Children's Center ("FCC"), a residential treatment center, filed an administrative complaint, invoking the EDGAR procedure. The State agency found no violations, and the U.S. Department of Education declined to hear FCC's appeal. The FCC then filed a lawsuit in the United States District Court for the Northern District of Indiana alleging claims arising under the IDEA and previously rejected by the administrative agencies. The federal court dismissed the claim for lack of standing because FCC was not a parent, guardian or an educational surrogate parent under 20 U.S.C § 1415(b). Pet. App. 17a-35a.

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[2] The statutory authority for what is popularly known as EDGAR complaints is derived from the General Education Provisions Act ("GEPA"), P.L. 90-247, 81 Stat. 783, Title 1 Sec. 305, Jan. 2, 1968. When initially proposed, the rules were "general regulations to apply to all direct grant and State administered programs administered by the Education Division" of the Department of Health, Education and Welfare. 44 Fed.Reg 26,298 (1979). The Notice of Proposed Rulemaking also indicated that all regulations pertaining to such activities would be consolidated into one set of rules to be known as EDGAR. Id.

[3] The implementing regulations for the IDEA indicate in unequivocal language that an impartial due process hearing is available only for "[a] parent or a public educational agency." 34 C.F.R. § 300.506(a). "Parent" is defined to include "a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with Sec. 300.514." 34 C.F.R. § 300.13. "Public agency" includes the State Education Agency (SEA), a Local Educational Agency (LEA), an Intermediate Educational Unit (IEU) and "any other political subdivisions of the State that are responsible for providing education to children with disabilities." 34 C.F.R. § 300.14

On appeal, the Seventh Circuit Court of Appeals reversed, finding that Indiana's EDGAR procedure provided the FCC a vehicle to gain standing to bring an action under the IDEA. The Seventh Circuit reasoned that, because the State provided an administrative complaint process required by one federal regulatory scheme, such process was an extension or enhancement of the procedural safeguards required by the IDEA and its implementing regulations, thereby affording any individual access to the procedural safeguards of 20 U.S.C. § 1415. Pet. App. 1a-16a.

REASONS FOR GRANTING THE WRIT

A. The Seventh Circuit's Decision Conflicts with Those of Other Circuits on an Issue of Considerable Importance.

The Seventh Circuit's analysis of the relationship between the EDGAR procedures and those required by the IDEA significantly departs from that of other circuits. This departure from the proper analytical framework results in an erroneous conclusion that, if not corrected, creates a problem not only for states within the circuit, but also for those in circuits in which the issue has not been addressed. Because the relationship between these two protocols has been and will continue to be a recurrent issue, this Court should resolve the conflict established by the Seventh Circuit's holding below. Without such resolution, there is a serious risk of establishing wrongful precedent, based on the Seventh Circuit's analysis and decision, in those circuits whose analysis would not otherwise lead to this erroneous conclusion.

Until the Seventh Circuit's recent decision, other circuit courts of appeal had recognized that the EDGAR complaint procedures were distinct and separate from the IDEA procedural safeguards. Most recently in 1993, the Tenth Circuit Court of Appeals stated "[t]he EDGAR procedures are

different in both purpose and scope from those in the IDEA and do not provide parents who file complaints with the same opportunities for a full administrative hearing and judicial review." *Association for Community Living v Romer*, 992 F.2d 1040, 1045 (10th Cir. 1993)(citation omitted). Other circuits have similarly distinguished the two procedures. *See Hoeft v. Tucson Unified School Dist.*, 967 F.2d 1298 (9th Cir. 1992) (the EDGAR procedures are an administrative mechanism in addition to the procedural safeguards of the IDEA); *Christopher W. v. Portsmouth School Committee*, 877 F.2d 1089 (1st Cir. 1989) (exhaustion of EDGAR administrative remedies is distinct from exhausting remedies under the EHA [predecessor to the IDEA]); and *Mrs. W. v. Tirozzi*, 832 F.2d 748 (2nd Cir. 1987) (EDGAR procedures have different purpose than IDEA procedural safeguards).

The First, Second, Ninth and Tenth circuits employed the correct analysis in recognizing that proceedings under EDGAR and the IDEA are different in scope and purpose. The Seventh Circuit's failure to utilize a similar analysis results in an untenable conclusion in conflict with the other circuits. It is incumbent upon this Court to resolve this disparity.

B. The Seventh Circuit Failed to Afford Due Deference to the Agency's Interpretation of Its Own Regulations.

Not only did the Seventh Circuit ignore the analysis and findings of its sister circuits, it also disregarded the principled of deferring to an agency's interpretation of its own regulations. As this Court stated in *Chevron, U.S.A. v. Natural Resources Defense*, 467 U.S. 837 (1984):

> We have long recognized that considerable weight should be accorded to an executive department's construction of a statutory scheme it is entrusted to

> administer, and the principle of deference to administrative interpretations "has been consistently followed by this Court whenever decision as to the meaning or reach of a statute has involved reconciling conflicting policies . . ."

Id. at 844 (citations omitted). This Court has also held that if "an agency's interpretation of its own regulation does not violate the Constitution or a federal statute, it must be given 'controlling weight unless it is plainly erroneous or inconsistent with the regulation.'" *Stinson v. U.S.*, 113 S. Ct. 1913, 1919 (1993).

The two primary federal policy making agencies for the IDEA are the Office of Special Education and Rehabilitative Services (OSERS) and the Office of Special Education Programs (OSEP). In *Metropolitan School District of Wayne Township v. Davila*, 969 F.2d 485 (7th Cir. 1992), cert. den., 113 S. Ct. 1360 (1992), the Seventh Circuit Court of Appeals acknowledged that deference would be given to the OSERS' interpretations of its own administrative regulation. The United States Department of Education has long distinguished EDGAR complaint procedures from IDEA due process procedures. *See Johnson,* 18 IDELR 589 (OSERS, 1991)[4] ("The due process and complaint procedures are two separate, distinct or independent remedies.") Pet. App. 81a.

Although courts do not defer to agency interpretations of a statute or regulation when the agency's interpretation is arbitrary and capricious, deference is required in this case. The Department's interpretation of the distinction between EDGAR procedures and the IDEA procedural safeguards cannot be deemed arbitrary and capricious both

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[4] The primary reporting service for disability related case law, policy interpretations and other adminstrative actions is the Individuals with Disabilities Education Law Reporter ("IDELR"), formerly entitled the Education of the Handicapped Law Reporter ("EHLR").

because it comports with the interpretations rendered by other circuit courts of appeal and because it is consistent with the principles of statutory construction. *Estate of Cowart v. Nicklos Drilling Co.*, 112 S. Ct. 2589, (1992)("[It] is the basic and unexceptional rule that courts must give effect to the clear meaning of the statute as written.."); *Morales v. Trans World Airlines*, 112 S. Ct. 2031, 2037 (1992)("[I]t is a commonplace of statutory construction that the specific governs the general.").

In this case, a general supervisory statute[5] authorizes the promulgation of EDGAR , and the IDEA is the authority for the procedural safeguard regulations. The IDEA is the more specific of the two statutes, stating in part:

> Any State educational agency . . .which receives assistance under this subchapter shall establish and maintain procedures . . . to assure that children with disabilities and their parents or guardians are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies and units.

20 U.S.C. § 1415(a). OSERS and the State of Indiana have consistently maintained that the IDEA procedural safeguards are limited to disabled children and their parents and that the EDGAR and IDEA procedures are separate and distinct.

Despite the Seventh Circuit's previous deference to agency interpretations, it abandoned that deference in the *FCC* case and supplied its own erroneous interpretation. Had such deference been afforded, the Seventh Circuit would have reached an appropriate conclusion in concert with the other circuits.

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[5] The General Education Provisions Act, 20 U.S.C. § 1221e-3(a)(1) authorizes, among other things, the promulgation, issuance, rescision and amendment of "rules and regulations governing the manner of operation of , and governing the applicable programs administered by the agency."

C. The Seventh Circuit's Decision Prevents the State's Compliance with the Requirements of the IDEA.

The ramifications of the Seventh Circuit's holding are significant. Compliance with the Seventh Circuit's decision it makes it impossible for Indiana to comply with the mandates of the IDEA because it cannot prevent third parties from interfering with the rights granted to disabled children and their parents.

To qualify for federal funding under the IDEA, each state must have an approved State Plan which complies with all of the federal requirements. 20 U.S.C. § 1413. To be approved, the State Plan must contain policies and procedures for establishing the procedural safeguards mandated by 20 U.S.C. § 1412. [6] All states, including Indiana, have procedures in place for investigating EDGAR complaints and conducting IDEA due process hearings.

Federal statutory and regulatory authority limits the availability of the IDEA procedural safeguards to parents, guardians or educational surrogate parents. The EDGAR procedure for challenging a state's compliance with the IDEA is available to a much broader population, including parents, guardians or educational surrogate parents, as well as any individual or organization.

The Seventh Circuit's analysis permits third parties to interfere with the educational rights of children with disabilities. Because all states have implemented EDGAR complaint procedures and IDEA procedures, the Seventh Circuit's reasoning would permit third parties, under the guise of advocating for children's rights and interests, to

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[6] " A primary mechanism for addressing compliance issues is OSEP's review of each State's three-year [IDEA-B] plan . . . OSEP's review of these plans provides a good examination of virtually all pertinent State policies and procedures. " *Trible*, EHLR 211:396, 397 (OSERS, 1986). Indiana's State Plan was approved by OSERS.

interfere with their rights using procedures unequivocally reserved by Congress for children with disabilities and their parents, guardians or educational surrogate parents. If third parties are allowed to interfere in such a manner, a state cannot comply with the assurances of its State Plan that it will safeguard the rights of children with disabilities and their parents.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

Respectfully submitted,

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